

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

CHARLES A. DANA, Jr. and THE  
NATIONAL NEWARK AND ESSEX BANKING  
COMPANY OF NEWARK, as Trustees u/W  
of AGNES L. DANA, Deceased

Claim No. CU-1900

Decision No. CU -0380

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for Claimants:

Pitney, Hardin and Kipp  
By Joel A. Wolfe, Esq.

AMENDED PROPOSED DECISION

This claim was presented by Agnes D. Cowperthwaite, CHARLES A. DANA, Jr. and THE NATIONAL NEWARK AND ESSEX BANKING COMPANY OF NEWARK, as Executors of the ESTATE of AGNES L. DANA, Deceased. By Proposed Decision dated October 4, 1967, the Commission denied the claim for the reason that claimants had not established the ownership, loss and value of the property, subject of the claim.

Evidence of record establishes that the estate of decedent, for whom the Executors filed claim, has now been closed and the Trustees under the Will of the decedent, listed in the caption, have been substituted as claimants in their representative capacities. The decedent and beneficiaries of Trust have been nationals of the United States at all times pertinent to this claim.

Claimants, through counsel, have submitted additional supporting evidence pertaining to the property, which includes the Hacienda Sevilla, located near El Cobre, Oriente Province, Cuba. The matter has been considered and the Proposed Decision is hereby amended.

The evidence includes a State Department file, letter of counsel to the State Department dated May 17, 1960, an excerpt of the Official Gazette of Cuba dated November 27, 1959, affidavits and correspondence, Letters

Testamentary issued on January 7, 1959 by the Somerset County Surrogate's Court of New Jersey in the Estate of Agnes L. Dana, Deceased, her Last Will and Testament, an Indenture dated August 1, 1955, between Agnes L. Dana and the Cuba Development Company, appraisal data including a report from the Municipal Mayoralty of El Cobre, dated March 19, 1958, and an independent report obtained by the Commission concerning the property, subject of the claim.

The record establishes that the Cuba Development Company, a Delaware corporation, acquired in 1917, the subject property, known as Hacienda Sevilla. Pursuant to dissolution of the corporation under Delaware law and to an Indenture dated August 1, 1955, it was conveyed to the late Agnes L. Dana, sole stockholder of the said corporation. Agnes L. Dana died testate on December 25, 1958, sole owner of the said property.

The evidence also establishes that the Government of Cuba expropriated the property, known as Hacienda Sevilla, on November 27, 1959 by Resolution 81 published in the Cuban Official Gazette on that date, pursuant to Law 588 (published in the Official Gazette on October 9, 1959) in furtherance of the Agrarian Reform Law.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Evidence of record discloses that the Hacienda Sevilla, with annexes Guama, Bayamito and Peladeros, consists of a tract of land of 8,997 caballerias of land, or 120,741.5394 hectares, or 298,359 acres. This property is located alongside the Caribbean Sea in the Municipality of El Cobre, Oriente Province, and includes extensive timber and arable land suitable for farming operations incident to sugar cane or coffee. Further, the property includes certain natural harbors on the sea, with access to shipping lanes. Claimants have submitted affidavits, including one executed by Mario Lazo, Esq., the Cuban counsel for the late Agnes L. Dana, and by Rafael de la Guardia, appraiser and realtor in Cuba, both executed in 1960. Affiants indicate that the subject property was valued in excess of \$1,000,000. Claimants have submitted other evidence concerning the value of the property at the time of loss, and information concerning value is contained in the State Department file as well as the report of the Mayor's Office of El Cobre, Oriente, Cuba, dated March 18, 1960.

Based upon the entire record, including evidence available to the Commission concerning the value of similar property in Cuba, the Commission finds that the property, known as Hacienda Sevilla, and subject of this claim, was valued at \$1,250,000 at the time of loss on November 27, 1959, when the Government of Cuba took the property under the Agrarian Land Reform Law; and that claimants herein have succeeded to and sustained a loss in this amount within the meaning of Title V of the Act.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and it is so ordered.


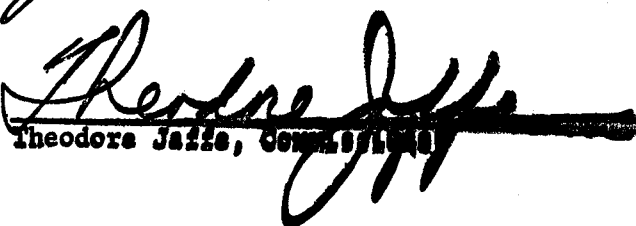
The following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that CHARLES A. DANA, Jr. and THE NATIONAL NEWARK AND ESSEX BANKING COMPANY OF NEWARK, as Trustees u/W of AGNES L. DANA, Deceased, succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) with interest at 6% per annum from November 7, 1959 to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Amended Proposed  
Decision of the Commission

SEP 16 1970

  
Lytle S. Garlock, Chairman  
  
Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

CU-1900

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

AGNES COWPERWAITE, CHARLES A. DANA, JR.  
AND THE NATIONAL NEWARK AND ESSEX BANKING  
COMPANY AS EXECUTORS OF THE ESTATE OF  
AGNES L. DANA, DECEASED

Claim No. CU - 1900

Decision No. CU **380**

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimants:

Pitney, Hardin and Kipp  
By James C. Pitney, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,250,000.00, was presented by the Estates of Agnes L. Dana, deceased and is based upon the asserted loss of a large landholding known as Hacienda Sevilla.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

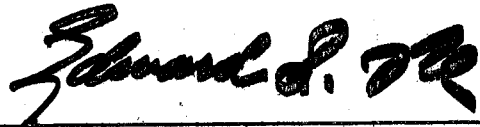
Claimants contend that their decedent acquired the subject property on August 1, 1955 from a corporation in which she was the sole shareholder. The primary evidence of record consists of a certified copy of decedent's will and an appraisal of the property by one Rafeal De La Guardia. By Commission letter of June 8, 1967, claimants were advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received to date.

On July 13, 1967, counsel was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

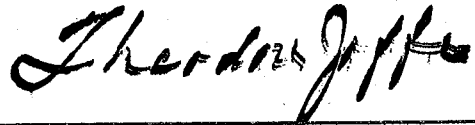
The Commission finds that claimants have not met the burden of proof in that they have failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

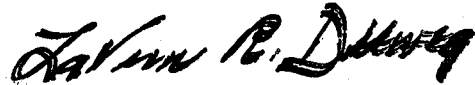
OCT 4 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)